

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

RONNIE GILES,

PLAINTIFF,

V. CIVIL ACTION NO: 3:06-cv-00528-WKW-VPM

MASTERBRAND CABINETS, INC.,

DEFENDANT.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO
DISMISS ONE OF PLAINTIFF'S COMPLAINT**

COMES NOW the Plaintiff by and through his counsel of record, and responds to Defendant's Motion to Dismiss Count One of Plaintiff's Complaint under the Family Medical Leave Act for dealing with "interference" and responds as follows:

1. Defendant has filed a Motion to Dismiss Count One of Plaintiff's complaint dealing with Plaintiff's claim of interference under the Family Medical Leave Act. That claim is based upon Plaintiff's claim of a serious health condition originating from a leave of absence from January 4-6, 2006 due to a viral sickness.
2. Plaintiff has confirmed to the undersigned that the period of incapacity fell just short of three consecutive days, therefore, Plaintiff cannot show a serious health condition in support of his interference claim. As a result, Plaintiff

does not oppose Defendant's Motion to Dismiss Count One of his complaint.

WHEREFORE, PREMISES CONSIDERED, NOW THEREFORE, Plaintiff Consents to the dismissal of **Count One only** of his complaint, with Plaintiff's FMLA retaliation count to remain before this Court.

Respectfully submitted,

/s/ David R. Arendall

David R. Arendall

OF COUNSEL:
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CERTIFICATE OF SERVICE

I have filed the foregoing with the Clerk of the Court using the CM/ECF system on August 17, 2006:

Mark J. Romaniuk
Kelley Bertoux Creveling

/s/ David R. Arendall

Of Counsel